

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ALEX M. AZAR, in his official capacity as
the Secretary of the United States
Department of Health and Human Services,

Defendants.

NO. 2:20-cv-01105

DECLARATION OF
KARTER BOOHER

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ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

DECLARATION OF KARTER BOOHER

I, KARTER BOOHER, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am over the age of 18, have personal knowledge of the facts and circumstances in this Declaration, and am competent to testify in this matter.

2. I am currently the Executive Director of Ingersoll Gender Center (“Ingersoll”), and have been in this position since January 2017. Prior to that I served on Ingersoll’s Board of Directors for two years, and came to that position with over a decade of experience in community organizing and policy development, including as a Deputy Field Director for an Alaska gubernatorial candidate, a Legislative Aide for an Anchorage, Alaska Assemblyman, an Outreach Campaign Manager for the Alaska Center for the Environment, and as a Senior Fellow and Fellowship Manager for the Washington Bus, which is a statewide movement building organization that increases political access and participation for young people across Washington State.

3. I received my bachelor’s degree in Political Science and Government and Women’s and Gender Studies from Pacific Lutheran University, and received numerous awards and have participated in numerous gender diversity initiatives and programs, including serving as the Diversity Director for the Associated Students of Pacific Lutheran University and as the Co-Commissioner for the Queer Ally Student Union. I have substantial experience in organizing and advocacy for the rights of lesbian, gay, bisexual, transgender, and queer people (LGBTQ).

4. I am aware of the rule of the federal Department of Health and Human Services entitled “Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority,” 85 Fed. Reg. 37160-248 (the “Final Rule”), which was published in the Federal Register on June 19, 2020, and which provides that protection from discrimination on the basis of sex in healthcare does not extend to LGBTQ people. I provide this Declaration to explain

1 facts and circumstances relating to healthcare discrimination against LGBTQ people in
2 Washington State, and to explain the harmful impacts of the Final Rule if it takes effect.

3 5. Ingersoll is a multi-service non-profit agency founded in 1977 in Washington by
4 and for transgender and gender non-conforming communities. It is one of the oldest such
5 organizations in the United States. Transgender and gender non-conforming individuals in
6 Washington come to us seeking a wide range of services, ranging from housing, shelter support,
7 healthcare advocacy, mental health support, and other resources and referrals as needed.
8 Ingersoll is a critical community resource for the tens of thousands of us in the transgender and
9 gender non-conforming community who call Washington home.

10 6. As Executive Director of Ingersoll, my role is to oversee and guide the
11 operations and mission of Ingersoll. I currently have twelve employees serving in a number of
12 positions, including a Healthcare Access Manager, a Healthcare Access Coordinator, and an
13 Economic Justice Coordinator.

14 7. The advocates I supervise work in Capitol Hill and around Seattle to serve our
15 community of transgender and gender non-conforming individuals throughout Washington.

16 8. I am deeply concerned about the Final Rule and its impact on our transgender
17 and gender non-conforming communities in Washington. The reasons include the fact that these
18 communities already suffer from significant discrimination in healthcare, such as denial of
19 gender affirming and gender appropriate healthcare services, harassment and ridicule by
20 providers, and a lack of access to non-discriminatory and culturally competent healthcare
21 services of all kinds. The Final Rule will cause us to lose healthcare coverage not only for
22 gender affirming healthcare services but other basic medical care as well, and will increase
23 discrimination and fear of discrimination in healthcare, causing members of our community to
24 postpone healthcare services or choose not to seek them at all. These developments will have
25 further negative health consequences for us.
26

9. Healthcare advocacy encompasses a significant amount of the work that Ingersoll does. Our Healthcare Access Manager and Healthcare Access Coordinator provide assistance in locating lifesaving gender affirming and trans-competent healthcare, obtaining health insurance and healthcare coverage, navigating insurance denials, and determining coverage and benefits. In 2019, we assisted hundreds of Washingtonians with healthcare related support, including navigating multiple coverage denials.

10. Understanding some of the baseline challenges to obtaining healthcare services faced by our community is critical to understanding how dangerous these and other barriers to appropriate healthcare are. In 2019, Ingersoll conducted a survey of transgender and gender non-conforming Washingtonians which explored issues related to their healthcare access.¹ 56% of survey and focus group participants identified as disabled, sick, and/or chronically ill, and 52% reported making under \$24,000 a year. A further 72.3% of respondents made under \$50,000 per year, which is well under the median for the Seattle area. These numbers underscore the fact that Washington's transgender and gender non-conforming communities are particularly vulnerable to the impacts of healthcare disparities.

11. More specifically, 62% of respondents reported having difficulty paying for healthcare costs, 47% reported they were unable to find a gender affirming surgeon that would work with their health insurance, and 59% of respondents on AppleHealth reported that they were unaware or unsure of how to find a gender affirming healthcare services provider within thirty minutes of where they live.

12. Many respondents also commented that the constantly changing rules make obtaining coverage more difficult. 66% of survey and focus group respondents either did not know or were not sure they understood Washington State and federal law regarding their rights and access to medical care. If the Final Rule goes into effect, the hurdles that exist currently

¹ *Healthcare Access, A Vision for Greater Access to Gender Affirming Healthcare*, retrieved from <http://www.ingersollgendercenter.org/2019-healthaccessreport>.

1 with insurance carriers and healthcare providers will be intensified by confusion over which
 2 law applies for any given transgender or gender non-conforming person seeking healthcare
 3 services. This confusion will exacerbate dangerous delays in care and create more
 4 administrative hurdles for providers who are actually willing to provide the care.

5 13. In our advocacy work, we often hear from community members that they
 6 overwhelmingly distrust healthcare providers and institutions, which is one reason transgender
 7 and gender non-conforming Washingtonians often do not seek preventive and routine care when
 8 they need it. This leads to poorer health outcomes, and increased complications and costs.
 9 Research demonstrates this. For example, the 2015 U.S. National Transgender Survey found
 10 that 23% of respondents did not see a doctor in the past year when they needed to because of
 11 fear of being mistreated as a transgender person.² This is consistent with our experience at
 12 Ingersoll in assisting transgender Washingtonians.

13 14. The reason so many members of our transgender and gender non-conforming
 14 community in Washington fear healthcare discrimination is because they have experienced such
 15 it in the form of denial of care or being misgendered and ridiculed. One respondent in the U.S.
 16 National Transgender Survey reported being misgendered by multiple medical professionals,
 17 some of whom denied to them that they were transgender, tried to persuade them that their
 18 transgender identity was just a misdiagnosis of something else, and made jokes about them to
 19 their face.³ The individuals who come to Ingersoll experience the same kinds of discrimination.

20 15. As an example, our office was contacted by a transgender person from Clark
 21 County who sought hormone therapy from their physician. The physician refused to prescribe
 22 testosterone for this person, citing “personal reasons,” and told them that gender affirming
 23 healthcare services were the wrong choice and attempted to talk them out of receiving this

24 ² National Center for Transgender Equality, Report of the 2015 U.S. Transgender Survey, p. 93, retrieved
 25 from <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

26 ³ 2015 U.S. Transgender Survey, p. 96.

1 healthcare. This person was left in tears, was not able to find another health care provider who
 2 would prescribe the hormones that they need, and has not been able to since February 2020.
 3 This person and individuals like them experience this kind of situation throughout Washington
 4 State and are at serious risk for depression, substance abuse, and unfortunately, suicide.

5 16. The majority of transgender and gender non-conforming Washingtonians we
 6 hear from do not trust of the healthcare system. 55% of our survey respondents reported having
 7 to lie to their healthcare provider in order to get the care they needed, and 50% reported
 8 concealing part of their medical history to providers to avoid outing themselves.

9 17. Denial of coverage, either because of discrimination at the healthcare provider
 10 level or because an individual's healthcare plan does not cover transgender healthcare services
 11 like hormone therapy or surgical procedures, is a major problem. The 2015 U.S. Transgender
 12 Survey reported that, while 78% of respondents wanted hormone therapy related to gender
 13 transition, only 49% had ever received it.⁴ Moreover, 25% who sought coverage for it in the
 14 past year had been denied, while 55% of those who sought coverage for surgical procedures for
 15 gender transition had been denied.⁵ This is consistent with our experience at Ingersoll, and is
 16 why a large part of our work involves assisting and advocating for those who have had problems
 17 with healthcare coverage like this. In the past year alone, Ingersoll has had to advocate for
 18 dozens who were denied healthcare services or otherwise discriminated against in healthcare.

19 18. As part of these efforts, Ingersoll has compiled a Provider Referral resource for
 20 the transgender and gender non-conforming community. Working with healthcare providers,
 21 we often hear about the significant obstacles they face getting insurance approvals for the
 22 medically necessary care our communities need. Specificall, gender affirming surgeries often
 23 require doctorate level mental health providers to submit surgical referral letters. For example,

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 25 ⁴ 2015 U.S. National Transgender Survey, p. 93.

26 ⁵ 2015 U.S. National Transgender Survey, p. 93.

1 obtaining gender affirming healthcare services often requires complicated pre-authorization
2 processes, are then denied, and require even more complicated appeal processes that more often
3 than not lead to transgender Washingtonians not getting the care they need. The emotional toll
4 this takes on transgender patients we serve is significant and often leads to increased levels of
5 depression, anxiety, and mental distress.

6 19. More often than not, it takes providers who are willing to provide this care more
7 time and resources to do so because of these barriers.

8 20. Denial of gender affirming healthcare services dramatically affects the mental
9 health of transgender and gender non-conforming Washingtonians, and it can be deadly.
10 Statistics also show higher rates of depression, substance abuse, and suicide for transgender
11 persons who are denied healthcare coverage, and at Ingersoll we regularly see transgender and
12 gender non-conforming persons in crisis because of such denial. As a result, Ingersoll holds
13 support group meetings to provide a space for transgender and gender non-conforming
14 Washingtonians to feel safe and obtain support. We have an average of 40 to 50 individuals
15 who seek support in this way, and healthcare discrimination or lack of access to healthcare is a
16 frequent topic of discussion.

17 21. An additional impact of increased health care discrimination against transgender
18 persons is increased violence against us. Our experience at Ingersoll demonstrates that
19 transgender individuals, including transgender youth, are subjected to violence at an increased
20 rate, and that, as a result, we experience homelessness at an increased rate because we are fearful
21 of seeking shelter given that violence occurs at shelters. Transgender individuals and gender
22 non-conforming individuals are then more at risk for health issues.

23 22. Compounding the harm are the barriers to comprehensive mental health services.
24 46.5% of survey respondents and focus group participants said that they could not access a
25 mental health provider on a regular basis. The inability to find a mental health provider that
26 accepted their insurance was a common barrier.

1 23. Our health care case managers who provide support to Washingtonians in need
2 of healthcare services have witnessed a rise in fear and confusion with regard to access to needed
3 and healthcare services. We know that if the Final Rule takes effect, we will see greater barriers,
4 including an increased need for advocacy and support in securing healthcare services, greater
5 distrust by transgender and gender non-conforming Washingtonians, and resulting delays or
6 postponement of needed care. All of this will lead to worse health outcomes for transgender and
7 gender non-conforming Washingtonians.

8 I declare under penalty of perjury under the laws of the United States and the State of
9 Washington that the foregoing is true and accurate.

10 DATED this 14 day of July, 2020, in Seattle, Washington

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